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Long Beach Press-Telegram and Southern California Media Guild, The Newspaper Guild-Communications Workers of America, Local 9400, AFL-CIO. Cases 21-CA-38484, 21-CA-38524, and 21-CA-38597

April 28, 2009

DECISION AND ORDER

BY CHAIRMAN LIEBMAN AND MEMBER SCHAMBER

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the consolidated complaint or the amendment to the consolidated complaint. Upon charges and amended charges filed by the Union, the General Counsel issued the consolidated complaint on January 30, 2009, and issued an amendment to the consolidated complaint on February 10, 2009, against Long Beach Press-Telegram, the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the Act. The Respondent failed to file any answer.

On March 5, 2009, the General Counsel filed a Motion for Default Judgment with the Board. On March 9, 2009, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Default Judgment¹

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the consolidated complaint and the amendment to the consolidated complaint affirmatively state that an answer must be received by the Regional Office on or before February 13 and February 24, 2009, respectively. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated February 24, 2009, notified the Respondent

¹ Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Liebman and Member Schaumber constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act.

that unless an answer was filed by March 3, 2009, a motion for default judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Delaware corporation with a principal place of business located at 300 Ocean Gate, Long Beach, California, has been engaged in the business of newspaper publishing. During the 12-month period ending November 30, 2008, a representative period, the Respondent, in conducting its business operations described above derived gross revenues in excess of \$200,000, held membership in or subscribed to interstate news services, published nationally syndicated features, advertised nationally sold products, and purchased and received at its Long Beach, California facility goods valued in excess of \$50,000 directly from points outside the State of California.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that Southern California Media Guild, The Newspaper Guild-Communications Workers of America, Local 9400, AFL-CIO, the Union, is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

James Janiga	Senior Vice President of Human Resources and Labor Relations
Phillip Sanfield	Executive Editor
Gloria Arango	Human Resource Director
John Futch	Managing Editor
Ed Moss	President and Chief Executive Officer of Los Angeles Newspaper Group

The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time employees employed in the following departments: editorial, circulation, customer service, PBX and maintenance operation

who are engaged in the publication and delivery of the Long Beach Press-Telegram at Long Beach, California; excluding all guards and supervisors as defined in the Act; excluding the following classifications within the editorial department: associate editor, assistant to the editor, business editor, city editor night, city editor day, assistant to the executive editor/confidential secretary, 1 confidential secretary, design editor, editorial pages editor, features editor, executive editor/Sr. VP, executive news editor, features editor, managing editor, news editor, photo director, senior editor/sports/photo, sports editor, building manager; and excluding the following classifications within the circulation department: circulation director, 2 confidential secretaries, circulation promotions manager, home delivery manager, 4 regional home delivery managers, single copy sales manager, NIE coordinator.

Since at least November 30, 2003, and at all material times, the Union has been the designated exclusive collective-bargaining representative of the unit, and since then the Union has been recognized as the representative by the Respondent. This recognition has been embodied in a collective-bargaining agreement, which was effective by its terms from November 30, 2003 to May 31, 2007. At all times since at least November 30, 2003, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

On about February 29, 2008, the Respondent implemented a reduction in its work force, including the elimination of its design and copy-editing departments, and the elimination of some sports reporter and photography job positions, resulting in the layoff of unit employees.

On about February 29, 2008, the Respondent subcontracted out or transferred unit work in the design and copy-editing departments.

The subjects set forth above relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining. The Respondent engaged in the conduct described above without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to this conduct and the effects of this conduct.

Since about April 30, 2008, and again about June 30, 2008, the Union has, in writing, requested that the Respondent furnish the Union with a list of all employees and their job classifications at the Daily Breeze who are performing work on behalf of the Respondent.

Since about May 8, 2008, and again about June 30, 2008, the Union, in writing, has requested that the Respondent furnish the Union with all dates and times,

wages paid, and equipment used, for non-Respondent employees performing bargaining unit work.

Since at least May 20, 2008, the Respondent has failed and refused to furnish the Union with the information requested by it as described above.

Since about June 17, 2008, and again about June 30, 2008, the Union, in writing, has requested that the Respondent furnish the Union with the identity of employees and their job classifications who are performing work on behalf of the Respondent.

Since about June 17, 2008, the Respondent has failed and refused to furnish the Union with the information requested by it as described above.

Since about June 30, 2008, the Union, in writing has requested that the Respondent furnish the Union with a roster of all independent contractors performing unit work, their location, their work, and pay rates.

Since about June 30, 2008, the Respondent has failed and refused to furnish the Union with the information requested by it as described above.

The information requested by the Union as described above is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit.²

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has failed and refused to bargain collectively with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(5) and (1) of the Act. The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

² Member Schaumber notes that while information pertaining to unit matters is presumptively relevant, information pertaining to nonunit matters is not. He is of the view that when, as here, information that is requested by a union is not presumptively relevant to the union's performance as bargaining representative, the burden is on the union to demonstrate its relevance when the information is requested from the employer. See generally his position in *Artesia Ready Mix Concrete*, 339 NLRB 1224, 1228-1230 (2003). Thus, when default judgment is sought in such a case because a respondent has failed to file an answer to a complaint, Member Schaumber's position is that the motion must be denied unless the complaint alleges facts sufficient to establish either that the requested information involved unit matters or that the relevance of the requested information was demonstrated by the union to the respondent. *Mid-American Gunite, Inc.*, 345 NLRB 1119, 1121-1122 (2005). However, in the present case, Member Schaumber agrees for institutional reasons, based on the summary language in the complaint and the Respondent's failure to file an answer, with the finding that the information requested was relevant to the Union's performance of its duties as the bargaining representative, as such a finding is consistent with extant Board precedent.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) of the Act by failing and refusing to bargain collectively and in good faith with the Union by reducing its work force, including eliminating departments and job positions which resulted in the layoffs of the Respondent's employees without prior notice to the Union and without affording the Union an opportunity to bargain with respect to this conduct and the effects of this conduct, we shall order the Respondent to offer the laid-off employees full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed, and to make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).³ The Respondent shall also be required to remove from its records all references to the unlawful layoffs, and to notify each of the employees in writing that this has been done and that the layoffs will not be used against them in any way.

In addition, having found that the Respondents unlawfully subcontracted out or transferred bargaining unit work, including work in the design and copy-editing departments, without prior notice to the Union and without affording the Union an opportunity to bargain with respect to and the effects of this conduct, we shall order the Respondent to restore the status quo ante by returning the design and copy-editing departments to their original location at the Respondent's Long Beach, California facility and return the work previously performed in those departments to the bargaining unit employees.⁴

Further, having found that the Respondent violated Section 8(a)(5) and (1) by failing and refusing to furnish the Union with relevant and necessary information to its

role as the exclusive collective-bargaining representative of the employees in the unit, we shall order the Respondent to furnish the Union in a timely manner with the information requested on April 30, May 8, June 17 and 30, 2008, respectively.

ORDER

The National Labor Relations Board orders that the Respondent, Long Beach Press-Telegram, Long Beach, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with Southern California Media Guild, The Newspaper Guild-Communications Workers of America, Local 9400, AFL-CIO, as the exclusive collective-bargaining representative of the employees in the appropriate unit below:

All full-time and regular part-time employees employed in the following departments: editorial, circulation, customer service, PBX and maintenance operation who are engaged in the publication and delivery of the Long Beach Press-Telegram at Long Beach, California; excluding all guards and supervisors as defined in the Act; excluding the following classifications within the editorial department: associate editor, assistant to the editor, business editor, city editor night, city editor day, assistant to the executive editor/confidential secretary, 1 confidential secretary, design editor, editorial pages editor, features editor, executive editor/Sr. VP, executive news editor, features editor, managing editor, news editor, photo director, senior editor/sports/photo, sports editor, building manager; and excluding the following classifications within the circulation department: circulation director, 2 confidential secretaries, circulation promotions manager, home delivery manager, 4 regional home delivery managers, single copy sales manager, NIE coordinator.

(b) Implementing a reduction in work force, including eliminating departments and job positions, without prior notice to the Union and without affording the Union an opportunity to bargain with respect to this conduct and the effects of this conduct.

(c) Subcontracting out or transferring bargaining unit work, including work in the design and copy-editing departments, without prior notice to the Union and without affording the Union an opportunity to bargain with respect to and the effects of this conduct.

(d) Failing and refusing to furnish the Union with information that is relevant and necessary to its role as the

³ In the complaint, the General Counsel seeks compound interest computed on a quarterly basis for any backpay or other monetary awards. Having duly considered the matter, we are not prepared at this time to deviate from our current practice of assessing simple interest. See, e.g., *Glen Rock Ham*, 352 NLRB 516 at fn. 1 (2008), citing *Rogers Corp.*, 344 NLRB 504 (2005).

⁴ At the compliance stage of the proceedings, the Respondent will be permitted to argue and present supporting evidence that restoring these departments would be unduly burdensome. *San Luis Trucking, Inc.*, 352 NLRB 211 fn. 5 (2008); *Allied General Services*, 329 NLRB 568, 569 (1999); *Lear Siegler, Inc.*, 295 NLRB 857 (1989).

exclusive collective-bargaining representative of the employees in the unit.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer the laid-off unit employees full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Make the laid-off unit employees whole for any loss of earnings and other benefits suffered as a result of the unlawful layoffs, with interest, in the manner set forth in the remedy section of this decision.

(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful layoffs of the unit employees, and within 3 days thereafter, notify the employees in writing that this has been done and that the layoffs will not be used against them in any way.

(d) Restore the status quo ante by returning the design and copy-editing departments to their original location at the Respondent's Long Beach, California facility and return the work previously performed in those departments to the unit employees.

(e) Furnish the Union in a timely manner the information requested on April 30, May 8, June 17 and 30, 2008, respectively.

(f) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(g) Within 14 days after service by the Region, post at its facility in Long Beach, California, copies of the attached notice marked "Appendix."⁵ Copies of the notice, on forms provided by the Regional Director for Region 21, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees

are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since February 29, 2008.

(h) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. April 28, 2009

Wilma B. Liebman, Chairman

Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain collectively and in good faith with Southern California Media Guild, The Newspaper Guild-Communications Workers of America, Local 9400, AFL-CIO as the exclusive collective-bargaining representative of the employees in the appropriate unit below:

⁵ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted By Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

All full-time and regular part-time employees employed in the following departments: editorial, circulation, customer service, PBX and maintenance operation who are engaged in the publication and delivery of the Long Beach Press-Telegram at Long Beach, California; excluding all guards and supervisors as defined in the Act; excluding the following classifications within the editorial department: associate editor, assistant to the editor, business editor, city editor night, city editor day, assistant to the executive editor/confidential secretary, 1 confidential secretary, design editor, editorial pages editor, features editor, executive editor/Sr. VP, executive news editor, features editor, managing editor, news editor, photo director, senior editor/sports/photo, sports editor, building manager; and excluding the following classifications within the circulation department: circulation director, 2 confidential secretaries, circulation promotions manager, home delivery manager, 4 regional home delivery managers, single copy sales manager, NIE coordinator.

WE WILL NOT implement a reduction in work force, including eliminating departments and job positions, without prior notice to the Union and without affording the Union an opportunity to bargain with respect to such conduct and the effects of such conduct.

WE WILL NOT subcontract out or transfer bargaining unit work, including work in the design and copy-editing departments, without prior notice to the Union and without affording the Union an opportunity to bargain with respect to such conduct and the effects of such conduct.

WE WILL NOT fail and refuse to furnish the Union information that is relevant and necessary to its role as the

exclusive collective-bargaining representative of the employees in the unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, within 14 days from the date of the Board's Order, offer the laid-off unit employees full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make the laid-off unit employees whole for any loss of earnings and other benefits suffered as a result of the unlawful layoffs, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful layoffs of unit employees, and within 3 days thereafter, notify the employees in writing that this has been done and that the layoffs will not be used against them in any way.

WE WILL restore the status quo ante by returning the design and copy-editing departments to their original location at our Long Beach, California facility and return the work previously performed in those departments to the unit employees.

WE WILL furnish the Union in a timely manner the information requested on April 30, May 8, June 17 and 30, 2008, respectively.

LONG BEACH PRESS-TELEGRAPH